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Responsibility of international organizations

Comments and observations received from international organizations

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I. Introduction

1. At its fifty-fifth session, the International Law Commission asked the Secretariat to circulate, on an annual basis, the portions of its report relevant to the topic "Responsibility of international organizations" to international organizations for their comments.[1] Pursuant to that request, selected international organizations were invited to submit their comments on the relevant portions of the Commission's 2003, 2004, 2005, 2006 and 2007 reports.[2] Most recently, the Commission sought comments on chapter VIII of its 2007 report[3] and on the issues of particular interest to it noted in paragraphs 29 and 30 of that report.[4]

2. The comments received from international organizations as at 18 March 2008 are reproduced in document A/CN.4/593. The present addendum contains written comments received from the International Organization for Migration on 15 April 2008.

II. Comments and observations received from international organizations

A. Draft article 43 — Ensuring the effective performance of the obligation of reparation

International Organization for Migration

While there is no question that inclusion of draft article 43 is justified, its precise placement should be reconsidered. Given the structure of the draft articles, it would be more logical to make it the second or third paragraph of article 34.

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[1] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 10* (A/58/10), para. 52.

[2] The written comments of international organizations received prior to 1 May 2007 are contained in documents A/CN.4/545, A/CN.4/556, A/CN.4/568 and Add.1, and A/CN.4/582.

[3] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 10* (A/62/10).

[4] Paragraphs 29 and 30 of the 2007 report read as follows:

> 29. The Commission would welcome comments and observations from Governments and international organizations on draft articles 31 to 45, in particular on draft article 43, relating to an obligation of members of a responsible international organization to take, in accordance with the rules of the organization, all appropriate measures in order to provide the organization with the means for effectively fulfilling its obligation to make reparation.
>
> 30. The Commission would also welcome views from Governments and international organizations on the two following questions, due to be examined in the next report:
>
> (a) Article 48 on responsibility of States for internationally wrongful acts provides that, in case of a breach by a State of an obligation owed to the international community as whole, States are entitled to claim from the responsible State cessation of the internationally wrongful act and performance of the obligation of reparation in the interest of the injured State or of the beneficiaries of the obligation breached. Should a breach of an obligation owed to the international community as a whole be committed by an international organization, would the other organizations or some of them be entitled to make a similar claim?
>
> (b) If an injured international organization intends to resort to countermeasures, would it encounter further restrictions than those that are listed in articles 49 to 53 of the articles on responsibility of States for internationally wrongful acts?

B. Specific issues raised in chapter III.D of the report of the International Law Commission on the work of its fifty-ninth session

1. Invocation of responsibility by an international organization in case of a breach by another organization of an obligation owed to the international community as a whole

International Organization for Migration

Article 48 on responsibility of States for internationally wrongful acts could be transposed, a priori, to the draft articles on the responsibility of international organizations; however, it would be helpful if the Commission illustrated its point with a few specific examples.

2. Resort to countermeasures by an international organization

International Organization for Migration

The possibility for an organization to resort to countermeasures should be subordinated to the existence of such a right in its constitutive instrument and other explicit norms adopted by its governing body. Resort to the concept of implicit powers to justify the application of countermeasures could lead to abuses, unless the existence of those particular countermeasures in international customary law is recognized and their invocation has been extended to international organizations.